

DATE: 12/21/2005CASE NUMBER: CR 04-02173-TUC-JMR(HCE)USA vs. RICHARD BANKSDEFENDANT: PRESENT NOT PRESENT RELEASED CUSTODYU.S. MAGISTRATE JUDGE: MAGISTRATE HÉCTOR C. ESTRADA Judge #: 70BQU.S. Attorney Beverly AndersonINTERPRETER REQ'D N/AAttorney for Defendant Tom Poore Appt Ret FPD Spec Appr

This matter comes before the Court regarding Defendant's Motion for Order of Dismissal.

Argument heard.

The Government is instructed to file an acknowledgment of familiarization with respect to:

(1) L.R.Civ. 7.2 and 7.3 as cross-referenced by L.R.Crim. 12.1 and 45.1; and (2) *Pioneer Investment Serv. Co. v. Brunswick Assoc. Ltd.*, 507 U.S. 380 (1993).

The Court takes the matter under advisement.

Defendant states his true name, for the record, is RICHARD SANCHEZ-BANKS.

THEREAFTER, IT IS ORDERED that this document shall be docketed as the Report and Recommendation.

The Magistrate Judge finds that the Government did not timely respond to Defendant's Motion to Dismiss for Violation of Fifth Amendment Due Process Clause; that the Government has now moved for an extension of time to respond to said defense motion; and that the Government timely responded to Defendant's Motion for Order of Dismissal. Compare *United States v. Warren*, 601 F.2d 471 (9th Cir. 1979) (affirming application of predecessor to L.R.Civ. 7.2(i) to dismiss indictments where government failed to respond to over 40 motions and failed to respond to motion for summary dismissal under local rule). Defendant's substantive motion was set for hearing before the District Court on January 5, 2006. On December 20, 2005, the Government requested a continuance of that hearing as well as other proceedings including the trial, and defense counsel did not object. The record reflects that the District Court granted the Government's Motion to Continue and reset the motion hearing to February 24, 2006. Upon consideration of the instant record, the Magistrate Judge RECOMMENDS that the District Court DENY Defendant's Motion for Order of Dismissal.

Pursuant to 28 U.S.C. §636(B), any party may serve and file written objections within ten days after being served with a copy of this Report and Recommendation. If objections are filed, the parties should use the following case number: CR 04-2173-TUC-JMR.

If objections are not timely filed, then the parties' right to de novo review by the District Court may be waived.

The Clerk is directed to send a copy of this Report and Recommendation to the parties and/or their counsel.

Copies to:

USA, CNSL, JMR, HCE

Recorded by Courtsmart

BY: Beth Harper

Deputy Clerk